

Adopted	Rejected
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COMMITTEE REPORT

YES:	12
NO:	0

MR. SPEAKER:

*Your Committee on Labor and Employment, to which was referred House Bill 1786, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning labor
- 3 and industrial safety and to make an appropriation.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 22-3-1-1 IS AMENDED TO READ AS FOLLOWS
- 6 [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) There is hereby created the
- 7 worker's compensation board of Indiana, which shall consist of seven
- 8 (7) members, not more than four (4) of whom shall belong to the same
- 9 political party, appointed by the governor, one (1) of whom he shall
- 10 designate as chairman. The chairman of said board shall be an attorney
- 11 of recognized qualifications.
- 12 (b) Each member of said board shall hold office for four (4) years
- 13 and until his successor is appointed and qualified.
- 14 (c) Each member of the board shall devote his entire time to the

1 discharge of the duties of his office and shall not hold any other
 2 position of trust or profit or engage in any occupation or business
 3 interfering with or inconsistent with the discharge of his duties as such
 4 member.

5 (d) Any member of said board may be removed by the governor at
 6 any time for incompetency, neglect of duty, misconduct in office, or
 7 other good cause to be stated in writing in the order of removal. In case
 8 of a vacancy in the membership of the said board, the governor shall
 9 appoint for the unexpired term.

10 (e) The budget agency, with the approval of the governor, shall
 11 approve the salaries of the members of the board and the secretary.

12 (f) The board may appoint a secretary and may remove such
 13 secretary. The secretary shall have authority to administer oaths and
 14 issue subpoenas in connection with the administration of IC 22-3-2
 15 through IC 22-3-7.

16 (g) The board **may appoint magistrates and may remove the**
 17 **magistrates. The board magistrates are entitled to determine issues**
 18 **arising under IC 22-3-2 through IC 22-3-7 with the following**
 19 **exceptions:**

20 **(1) Claims regarding the compensability of an injury or a**
 21 **disease arising out of and in the course of the employment**
 22 **under IC 22-3-2-2(a) or IC 22-3-7-2(a).**

23 **(2) A determination as to whether one (1) of the special**
 24 **defenses contained in IC 22-3-2-8 or IC 22-3-7-21(b) operates**
 25 **as a bar to the employee's claim.**

26 **(3) A determination as to whether the employee is**
 27 **permanently and totally disabled for the purposes of**
 28 **IC 22-3-3-10, IC 22-3-3-13, or IC 22-3-7-16.**

29 **(4) The approval of settlement agreements under**
 30 **IC 22-3-2-15.**

31 **(5) Issues involving a lack of diligence, bad faith, or an**
 32 **independent tort under IC 22-3-4-12.1.**

33 **(h) The board**, subject to the approval of the governor, may employ
 34 and fix the compensations of such clerical and other assistants as it may
 35 deem necessary.

36 ~~(h)~~ **(i)** The members of the board and its assistants shall be entitled
 37 to receive from the state their actual and necessary expenses while
 38 traveling on the business of the board, but such expenses shall be

1 approved by the chairman of the board before payment is made.

2 ~~(i)~~ **(j)** All salaries and expenses of the board shall be audited and
3 paid out of the state treasury in the manner prescribed for similar
4 expenses in other departments or branches of the state service.

5 SECTION 2. IC 22-3-1-3 IS AMENDED TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) The worker's compensation
7 board may adopt rules under IC 4-22-2 to carry into effect the worker's
8 compensation law (IC 22-3-2 through IC 22-3-6) and the worker's
9 occupational diseases law (IC 22-3-7).

10 (b) The worker's compensation board is authorized:

11 (1) to hear, determine, and review all claims for compensation
12 under IC 22-3-2 through IC 22-3-7;

13 (2) to require medical service for injured employees;

14 (3) to approve claims for medical service or attorney's fees and
15 the charges for nurses and hospitals;

16 (4) to approve agreements;

17 (5) to modify or change awards;

18 (6) to make conclusions of facts and rulings of law;

19 (7) to certify questions of law to the court of appeals;

20 (8) to approve deductions in compensation made by employers for
21 amounts paid in excess of the amount required by law;

22 (9) to approve agreements between an employer and an employee
23 or the employee's dependents for the cash payment of
24 compensation in a lump sum, or, in the case of a person under
25 eighteen (18) years of age, to order cash payments;

26 (10) to establish and maintain a list of independent medical
27 examiners and to order physical examinations;

28 (11) to subpoena witnesses **and order the production and**
29 **examination of books, papers, and records;**

30 (12) to administer oaths;

31 (13) to apply to the circuit or superior court to enforce the
32 attendance and testimony of witnesses and the production and
33 examination of books, papers, and records;

34 (14) to create and undertake a program designed to educate and
35 provide assistance to employees and employers regarding the
36 rights and remedies provided by IC 22-3-2 through IC 22-3-7,
37 and to provide for informal resolution of disputes;

38 (15) to assess and collect, on the board's own initiative or on the

1 motion of a party, the penalties provided for in IC 22-3-2 through
 2 IC 22-3-7; and

3 **(16) to appoint board magistrates to determine issues arising**
 4 **under IC 22-3-2 through IC 22-3-7 subject to the limitations**
 5 **set forth in section 1(g) of this chapter; and**

6 **(17) to exercise all other powers and duties conferred upon the**
 7 **board by law.**

8 SECTION 3. IC 22-3-1-3.1 IS ADDED TO THE INDIANA CODE
 9 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 2001]: **Sec. 3.1. A magistrate appointed by the worker's**
 11 **compensation board may do any of the following, but is not limited**
 12 **to the following:**

13 **(1) Administer an oath or affirmation that is required by law.**

14 **(2) Order that a subpoena be issued in a matter pending**
 15 **before the board.**

16 **(3) Conduct a prehearing conference or evidentiary hearing.**

17 **(4) Verify a certificate for the authentication of records of a**
 18 **proceeding conducted by the magistrate.**

19 SECTION 4. IC 22-3-1-3.2 IS ADDED TO THE INDIANA CODE
 20 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 21 1, 2001]: **Sec. 3.2. A magistrate shall report the magistrate's**
 22 **findings in an evidentiary hearing to the board member to whom**
 23 **the case was assigned. The board member shall enter the final**
 24 **order or award. The final order or award is subject to full board**
 25 **review under IC 22-3-4-7.**

26 SECTION 5. IC 22-3-4-2 IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2001]: **Sec. 2. (a) The worker's compensation**
 28 **board may make rules not inconsistent with IC 22-3-2 through**
 29 **IC 22-3-6 for carrying out the provisions of IC 22-3-2 through**
 30 **IC 22-3-6. Processes and procedures under IC 22-3-2 through**
 31 **IC 22-3-6 shall be as summary and simple as reasonably may be. The**
 32 **board or any member of the board shall have the power for the purpose**
 33 **of IC 22-3-2 through IC 22-3-6 to subpoena witnesses, administer or**
 34 **cause to have administered oaths, and to examine or cause to have**
 35 **examined such parts of the books and records of the parties to a**
 36 **proceeding as relate to questions in dispute.**

37 **(b) The county sheriff shall serve all subpoenas of the board and**
 38 **magistrates appointed under IC 22-3-1-1(g) and shall receive the**

1 same fees as provided by law for like service in civil actions. Each
 2 witness who appears in obedience to such subpoenas of the board shall
 3 receive for attendance the fees and mileage for witnesses in civil cases
 4 in the courts.

5 (c) The circuit or superior court shall, on application of the board or
 6 any member of the board, enforce by proper proceedings the attendance
 7 and testimony of witnesses and the production and examination of
 8 books, papers, and records.

9 SECTION 6. IC 22-3-4-5 IS AMENDED TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) If the employer and the
 11 injured employee or the injured employee's dependents disagree in
 12 regard to the compensation payable under IC 22-3-2 through IC 22-3-6
 13 or, if they have reached such an agreement, which has been signed by
 14 them, filed with and approved by the worker's compensation board, and
 15 afterward disagree as to the continuance of payments under such
 16 agreement, or as to the period for which payments shall be made, or to
 17 the amount to be paid, because of a change in conditions since the
 18 making of such agreement, either party may then make an application
 19 to the board for the determination of the matters in dispute.

20 (b) Upon the filing of such application, the board shall set the date
 21 of hearing, which shall be as early as practicable, and shall notify the
 22 employee, employer, and attorneys of record in the manner prescribed
 23 by the board of the time and place of all hearings and requests for
 24 continuances. The hearing of all claims for compensation, on account
 25 of injuries occurring within the state, shall be held in the county in
 26 which the injury occurred, **or** in any adjoining county, except when the
 27 parties consent to a hearing elsewhere. Claims assigned to an
 28 individual board member that are considered to be of an emergency
 29 nature by that board member, may be heard in any county within the
 30 board member's jurisdiction.

31 (c) All disputes arising under IC 22-3-2 through IC 22-3-6, if not
 32 settled by the agreement of the parties interested therein, with the
 33 approval of the board, shall be determined by the board.

34 SECTION 7. IC 22-3-4-6 IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2001]: Sec. 6. The board by any or all of its
 36 members **or magistrates appointed under IC 22-3-1-1** shall hear the
 37 parties at issue, their representatives and witnesses, and shall determine
 38 the dispute in a summary manner. The award shall be filed with the

1 record of proceedings, and a copy thereof shall immediately be sent to
2 each of the employee, employer, and attorney of record in the dispute.

3 SECTION 8. IC 22-3-7-24 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 24. (a) The worker's
5 compensation board may make rules not inconsistent with this chapter
6 for carrying out the provisions of this chapter. Processes and
7 procedures under this chapter shall be as summary and simple as
8 reasonably may be. The board, or any member thereof, shall have the
9 power, for the purpose of this chapter, to subpoena witnesses,
10 administer or cause to have administered oaths, and to examine or
11 cause to have examined such parts of the books and records of the
12 parties to a proceeding as relate to questions in dispute. The county
13 sheriff shall serve all subpoenas of the board **and magistrates**
14 **appointed under IC 22-3-1-1(g)** and shall receive the same fees as
15 provided by law for like service in civil actions. Each witness who
16 appears in obedience to such subpoena of the board shall receive for
17 attendance the fees and mileage for witnesses in civil cases in the
18 courts. The circuit or superior court shall, on application of the board
19 or any member thereof, enforce by proper proceedings the attendance
20 and testimony of witnesses and the production and examination of
21 books, papers, and records.

22 (b) The fees of attorneys and physicians and charges of nurses and
23 hospitals for services under this chapter shall be subject to the approval
24 of the worker's compensation board. When any claimant for
25 compensation is represented by an attorney in the prosecution of his
26 claim, the board shall fix and state in the award, if compensation be
27 awarded, the amount of the claimant's attorney's fees. The fee so fixed
28 shall be binding upon both the claimant and his attorney, and the
29 employer shall pay to the attorney, out of the award, the fee so fixed,
30 and the receipt of the attorney therefor shall fully acquit the employer
31 for an equal portion of the award.

32 (c) Whenever the worker's compensation board shall determine
33 upon hearing of a claim that the employer has acted in bad faith in
34 adjusting and settling said award, or whenever the board shall
35 determine upon hearing of a claim that the employer has not pursued
36 the settlement of said claim with diligence, then the board shall, if
37 compensation be awarded, fix the amount of the claimant's attorney's
38 fees and such attorney's fees shall be paid to the attorney and shall not

1 be charged against the award to the claimant. Such fees as are fixed and
 2 awarded on account of a lack of diligence or because of bad faith on the
 3 part of the employer shall not be less than one hundred fifty dollars
 4 (\$150).

5 (d) The worker's compensation board may withhold the approval of
 6 the fees of the attending physician in any case until he shall file a report
 7 with the board on the form prescribed by such board.

8 SECTION 9. IC 22-3-7-27, AS AMENDED BY P.L.235-1999,
 9 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2001]: Sec. 27. (a) If the employer and the employee or the
 11 employee's dependents disagree in regard to the compensation payable
 12 under this chapter, or, if they have reached such an agreement, which
 13 has been signed by them, filed with and approved by the worker's
 14 compensation board, and afterward disagree as to the continuance of
 15 payments under such agreement, or as to the period for which payments
 16 shall be made, or as to the amount to be paid, because of a change in
 17 conditions since the making of such agreement, either party may then
 18 make an application to the board for the determination of the matters
 19 in dispute. When compensation which is payable in accordance with an
 20 award or by agreement approved by the board is ordered paid in a lump
 21 sum by the board, no review shall be had as in this subsection
 22 mentioned.

23 (b) The application making claim for compensation filed with the
 24 worker's compensation board shall state the following:

25 (1) The approximate date of the last day of the last exposure and
 26 the approximate date of the disablement.

27 (2) The general nature and character of the illness or disease
 28 claimed.

29 (3) The name and address of the employer by whom employed on
 30 the last day of the last exposure, and if employed by any other
 31 employer after such last exposure and before disablement, the
 32 name and address of such other employer or employers.

33 (4) In case of death, the date and place of death.

34 (5) Amendments to applications making claim for compensation
 35 which relate to the same disablement or disablement resulting in
 36 death originally claimed upon may be allowed by the board in its
 37 discretion, and, in the exercise of such discretion, it may, in
 38 proper cases, order a trial de novo. Such amendment shall relate

1 back to the date of the filing of the original application so
2 amended.

3 (c) Upon the filing of such application, the board shall set the date
4 of hearing, which shall be as early as practicable, and shall notify the
5 parties, in the manner prescribed by the board, of the time and place of
6 hearing. The hearing of all claims for compensation on account of
7 occupational disease shall be held in the county in which the last
8 exposure occurred or in any adjoining county, except when the parties
9 consent to a hearing elsewhere. Claims assigned to an individual board
10 member that are considered to be of an emergency nature by that board
11 member, may be heard in any county within the board member's
12 jurisdiction.

13 (d) The board by any or all of its members **or magistrates**
14 **appointed under IC 22-3-1-1** shall hear the parties at issue, their
15 representatives, and witnesses, and shall determine the dispute in a
16 summary manner. The award shall be filed with the record of
17 proceedings, and a copy thereof shall immediately be sent by registered
18 mail to each of the parties in dispute.

19 (e) If an application for review is made to the board within thirty
20 (30) days from the date of the award made by less than all the
21 members, the full board, if the first hearing was not held before the full
22 board, shall review the evidence, or, if deemed advisable, hear the
23 parties at issue, their representatives, and witnesses as soon as
24 practicable, and shall make an award and file the same with the finding
25 of the facts on which it is based and send a copy thereof to each of the
26 parties in dispute, in like manner as specified in subsection (d).

27 (f) An award of the board by less than all of the members as
28 provided in this section, if not reviewed as provided in this section,
29 shall be final and conclusive. An award by the full board shall be
30 conclusive and binding unless either party to the dispute, within thirty
31 (30) days after receiving a copy of such award, appeals to the court of
32 appeals under the same terms and conditions as govern appeals in
33 ordinary civil actions. The court of appeals shall have jurisdiction to
34 review all questions of law and of fact. The board, of its own motion,
35 may certify questions of law to the court of appeals for its decision and
36 determination. An assignment of errors that the award of the full board
37 is contrary to law shall be sufficient to present both the sufficiency of
38 the facts found to sustain the award and the sufficiency of the evidence

1 to sustain the finding of facts. All such appeals and certified questions
2 of law shall be submitted upon the date filed in the court of appeals,
3 shall be advanced upon the docket of the court, and shall be determined
4 at the earliest practicable date, without any extensions of time for filing
5 briefs. An award of the full board affirmed on appeal, by the employer,
6 shall be increased thereby five percent (5%), and by order of the court
7 may be increased ten percent (10%).

8 (g) Upon order of the worker's compensation board made after five
9 (5) days notice is given to the opposite party, any party in interest may
10 file in the circuit or superior court of the county in which the
11 disablement occurred a certified copy of the memorandum of
12 agreement, approved by the board, or of an order or decision of the
13 board, or of an award of the full board unappealed from, or of an award
14 of the full board affirmed upon an appeal, whereupon the court shall
15 render judgment in accordance therewith and notify the parties. Such
16 judgment shall have the same effect and all proceedings in relation
17 thereto shall thereafter be the same as though such judgment has been
18 rendered in a suit duly heard and determined by the court. Any such
19 judgment of such circuit or superior court, unappealed from or affirmed
20 on appeal or modified in obedience to the mandate of the court of
21 appeals, shall be modified to conform to any decision of the industrial
22 board ending, diminishing, or increasing any weekly payment under the
23 provisions of subsection (i) upon the presentation to it of a certified
24 copy of such decision.

25 (h) In all proceedings before the worker's compensation board or in
26 a court under the compensation provisions of this chapter, the costs
27 shall be awarded and taxed as provided by law in ordinary civil actions
28 in the circuit court.

29 (i) The power and jurisdiction of the worker's compensation board
30 over each case shall be continuing, and, from time to time, it may, upon
31 its own motion or upon the application of either party on account of a
32 change in conditions, make such modification or change in the award
33 ending, lessening, continuing, or extending the payments previously
34 awarded, either by agreement or upon hearing, as it may deem just,
35 subject to the maximum and minimum provided for in this chapter.
36 When compensation which is payable in accordance with an award or
37 settlement contract approved by the board is ordered paid in a lump
38 sum by the board, no review shall be had as in this subsection

1 mentioned. Upon making any such change, the board shall immediately
2 send to each of the parties a copy of the modified award. No such
3 modification shall affect the previous award as to any money paid
4 thereunder. The board shall not make any such modification upon its
5 own motion, nor shall any application therefor be filed by either party
6 after the expiration of two (2) years from the last day for which
7 compensation was paid under the original award made either by
8 agreement or upon hearing, except that applications for increased
9 permanent partial impairment are barred unless filed within one (1)
10 year from the last day for which compensation was paid. The board
11 may at any time correct any clerical error in any finding or award.

12 (j) The board or any member thereof may, upon the application of
13 either party or upon its own motion, appoint a disinterested and duly
14 qualified physician or surgeon to make any necessary medical
15 examination of the employee and to testify in respect thereto. Such
16 physician or surgeon shall be allowed traveling expenses and a
17 reasonable fee, to be fixed by the board. The fees and expenses of such
18 physician or surgeon shall be paid by the state only on special order of
19 the board or a member thereof.

20 (k) The board or any member thereof may, upon the application of
21 either party or upon its own motion, appoint a disinterested and duly
22 qualified industrial hygienist, industrial engineer, industrial physician,
23 or chemist to make any necessary investigation of the occupation in
24 which the employee alleges that he was last exposed to the hazards of
25 the occupational disease claimed upon, and testify with respect to the
26 occupational disease health hazards found by such person or persons
27 to exist in such occupation. Such person or persons shall be allowed
28 traveling expenses and a reasonable fee, to be fixed by the board. The
29 fees and expenses of such persons shall be paid by the state, only on
30 special order of the board or a member thereof.

31 (l) Whenever any claimant misconceives the claimant's remedy and
32 files an application for adjustment of a claim under IC 22-3-2 through
33 IC 22-3-6 and it is subsequently discovered, at any time before the final
34 disposition of such cause, that the claim for injury or death which was
35 the basis for such application should properly have been made under
36 the provisions of this chapter, then the application so filed under
37 IC 22-3-2 through IC 22-3-6 may be amended in form or substance or
38 both to assert a claim for such disability or death under the provisions

1 of this chapter, and it shall be deemed to have been so filed as amended
 2 on the date of the original filing thereof, and such compensation may
 3 be awarded as is warranted by the whole evidence pursuant to the
 4 provisions of this chapter. When such amendment is submitted, further
 5 or additional evidence may be heard by the worker's compensation
 6 board when deemed necessary. Nothing in this section contained shall
 7 be construed to be or permit a waiver of any of the provisions of this
 8 chapter with reference to notice or time for filing a claim, but notice of
 9 filing of a claim, if given or done, shall be deemed to be a notice or
 10 filing of a claim under the provisions of this chapter if given or done
 11 within the time required in this chapter.

12 SECTION 10. [EFFECTIVE JULY 1, 2001] (a) **There is**
 13 **appropriated to the worker's compensation board one hundred**
 14 **ninety thousand dollars (\$190,000) from the state general fund for**
 15 **carrying out the purposes of IC 22-3-1-1(g), as amended by this act,**
 16 **beginning July 1, 2001, and ending June 30, 2002.**

17 (b) **There is appropriated to the worker's compensation board**
 18 **one hundred ninety thousand dollars (\$190,000) from the state**
 19 **general fund for carrying out the purposes of IC 22-3-1-1(g), as**
 20 **amended by this act, beginning July 1, 2002, and ending June 30,**
 21 **2003.**

22 (c) **The money appropriated by this SECTION does not revert**
 23 **to the state general fund at the close of any fiscal year but remains**
 24 **available to the worker's compensation board until the purposes**
 25 **for which it was appropriated are fulfilled.**

(Reference is to HB 1786 as introduced.)

and when so amended that said bill do pass.

Representative Liggett